

***THE HON'BLE MR JUSTICE B.PRAKASH RAO**
And
***THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY**

+W.P.NO.3701 OF 1999

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%Dated 22.01.2007

1. Construction Committee, Tippu Khan Mosque, Osmania University Campus, Hyderabad, rep.by its President Sri Mohd.Sallahuddin, S/o.Mohd.Shahbuddin, 52 years, R/o.M-1/34, Osmania University Campus, Hyderabad.

And two others.

...PETITIONERS

VERSUS

\$ 1. Osmania University, Hyderabad, rep.by its Registrar, Osmania University Campus, Hyderabad.

And one other.

...RESPONDENTS

! Counsel for Petitioners: Sri M.V.Durga Prasad

^ Counsel for the Respondents: Standing Counsel for Osmania University

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>HEAD NOTE:

?Cases Referred

1. AIR 1979 SC 1682

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

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WRIT PETITION NO.3701 of 1999

22nd January 2007

Between:

1. Construction Committee, Tippu Khan Mosque, Osmania University Campus, Hyderabad, rep.by its President Sri Mohd.Sallahuddin, S/o.Mohd.Shahbuddin, 52 years, R/o.M-1/34, Osmania University Campus, Hyderabad.

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1. Osmania University, Hyderabad, rep.by its Registrar, Osmania University Campus, Hyderabad.

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THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

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WRIT PETITION NO.3701 of 1999

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ORDER: (Per the Hon'ble Mr Justice B.Prakash Rao)

Heard Sri M.V.Durga Prasad, learned counsel appearing on behalf of the petitioners and the learned Standing Counsel appearing on behalf of the first respondent.

The petitioners, who constitute 1 and 2 as Committees and represented by the third petitioner are the respondents before the Special Court under Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 Hyderabad, filed this Writ Petition under Article 226 of the Constitution of India, *inter alia*, seeking to assail the order dated 25.11.1998 in L.G.C.No.8 of 1993 on the file of the second respondent in pursuance of an application purported to have been filed under Section 8 (1) of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 ('the Act' for brevity) holding that they are the land grabbers.

In the application, it is stated that the first respondent a University is the owner of Plot Nos.107 and 108 admeasuring 2928 square yards situated in part in Survey No.172 of Zamisthanpur Village and Survey No.74 of Bagh Amberpet Village. Within the said land, an old Mosque (Masjid) is situated on a small extent. Since the entire land was acquired by the Osmania University, the Mosque, being part of it, was handed over to the University. However, the Muslim employees of the University are permitted to conduct prayers and religious congregations in the said Mosque, which covers an area of 278 sq.yards. However, in the year 1989, the University gave an extent of Acs.2 in Plot Nos.107 and 108 abutting Mosque to the Hyderabad Telephones. On a representation made by the Tippukhan Construction Committee to make certain constructions on the rear side of the Mosque, it was rejected. Thereafter, a three Man Committee was constituted on 04.11.1992 who submitted a report to the effect that the Mosque was situated in an extent of 278 square yards only for which the University expressed no objection. Further, it has stated that the petitioners herein grabbed the extent in question and making attempts to make constructions. In the cause title, it is shown as “the Construction Committee, Tippu Khan Mosque” Osmania University,

represented by the President and the Secretary, who are making such constructions for the purpose of the said Mosque in spite of objections and police complaint. Hence, the application.

Contesting the said application, the case of the respondents was that of total denial and further reiterated that the said property was not acquired and all along being used as Eidgah where religious functions and prayers have been permitted and the Mosque is sufficiently an old one and there cannot be any objection on behalf of the University to make any construction by the Mosque. It was their further case that Nawab Tippukhan Bahadur, who was owner of Sy. No.43 constructed the Mosque within total area of 6000 sq.yds. There was an objection for acquisition of said land in Sy.No.43. The Mosque has not been properly shown and described.

On these and other allegations, the Court below framed the issues and subsequently, the parties went into trial where P.Ws.1 and 2 were examined and Exs.A1 to A12 were marked on behalf of the applicant. On behalf of the respondents, R.Ws.1 and 2 were examined and Exs.B1 to B10 were marked. Considering the said evidence and material available on record, the Court below found that the petitioners are land grabbers and hence, liable to be

evicted. Hence, the Writ Petition.

On consideration of the detailed submissions made on either side and on perusal of the material available on record, the point that arises for consideration is as to whether the application filed by the first respondent against the petitioners, is maintainable when the Mosque was not impleaded and the petitioners are land grabbers.

On a reading of the entire application and the evidence let in on behalf of the first respondent in support of the said application and the acts of grabbing by the petitioners, it is not their case specifically or otherwise that the petitioners on their own committed any acts of land grabbing in their individual capacity. However, the very nomenclature as shown in the cause title that it is a Committee constituted on behalf of the Mosque, the entire activity is being done by and on behalf of the Mosque alone. Surprisingly, in spite of the specific allegation made on behalf of the Mosque, which is a *wakf* property and is an independent institution and a legal entity, it is not impleaded. No explanation is forthcoming on behalf of the respondents as to why the said Institution is not impleaded. There is no specific averment or allegation individually against any of the petitioners personally. They only represent the Mosque and at the most acting as agents, acting on behalf of the Mosque. The

grievance if any, could be against Mosque but not the petitioners as such.

On the facts and circumstances that arose basing on the very application filed by the first respondent pointedly the activities as attributed against the petitioners herein are only in respect of the constructions adding to the existing Mosque. In the format of the application filed, the allegations referred to in the concise statement, it is stated that there was an old Mosque situated in a small extent, which is a part of the property delivered to the University after the acquisition. However, the petitioners grabbed the schedule land and started construction of permanent structures upon the area actually covered by the Mosque and also the adjacent open land without any lawful entitlement. The construction was not only being carried on in the area covered by the Mosque but also a gate is erected to the southern side of the existing Mosque. Though the University has called upon the petitioners to produce the plan and map, they kept silent. These allegations were denied by the petitioners as already stated in their counter-affidavit claiming the entire property as part of the said Mosque Institution. Even in the evidence as let in on behalf of the first respondent-original applicant P.W.1, who is working as an Estate Officer, speaks about the

activity of construction by the petitioners by raising the compound wall and opening a gate without any permission from the University or the Municipal Corporation. The same thing was reiterated by P.W.2, who has been examined by the first respondent. Therefore, it is the very case of the first respondent to the effect that those persons are acting more in the name and on behalf of the Mosque than in any activity in their individual capacities. The so-called Committee is neither constituted by the Wakf Board and the Wakf Board was not impleaded in these proceedings nor any of the Managing Committees constituted by the Wakf Board for the said mosque. Though an objection has been raised by the petitioners that the Mosque is not properly represented and shown, no proper steps have been taken to correct the cause title or implead the Institution itself through proper representation as contemplated under law.

In the similar circumstances, in ***Profulla Chorone Requitte and others v. Satya Choron Requitte***^[1], the Supreme Court has held that from whatever angle the matter may be looked at, the conclusion is inescapable that Shebaitship deity remained solely with the descendants of the founder; and the defendant respondent who is admittedly a grandson of the founder, had been regarded as

one of the Shebaites, and as such, entitled to reside in the disputed rooms. All the Shebaites were therefore, necessary parties; but all of them have not been impleaded. The trustees by themselves, have no right to maintain the suit in respect of the debutter property; the legal title to which vests in the idol, and in the Trustees. The right to sue on behalf of the deity vests in the Shebaites. All the Shebaites of the deity not having been made parties, the suit was not properly constituted, and was liable to be dismissed on this score alone.

Land Grabber as defined in the Act is an identified person or persons in the eye of law, who need to tackle appropriately as contemplated for their acts of grabbing. The seeker and the culprit in the reliefs provided for should be those with a description, known to law. The Committee or any member thereof or representing it do not have any locus or existence on their own- nor, do they have or known at least to connect with an interest of whatsoever nature, other than that of the institution, on whose behalf the Committee is acting or alleged to be responsible for those acts of grabbing. The Mosque is an independent juristic person, as an institution, governed by its own law, the Wakf Act. On the whole, the facts and circumstances, which led the applicant/University to file the application on a grievance or a cause of an action attributed directly

against the said Institution. Even though an objection was raised in the counter-affidavit filed by the petitioners pointing out the independent existence of the Mosque, as an Institution, yet, no steps are taken to mend the application. There appears to have no attempt to rope in or proceed against the Mosque, prior to the filing of the application, as if does not disclose any such detail nor gives any reason to avoid the Mosque. It is not the case of the applicant/University that the petitioners are claiming or setting up any claim of whatsoever right, title or interest nature in themselves, *dehors* the Institution. Neither, it is their case that any approach or complaint is made to the Wakf Board, constituted under the Wakf Act, which not only has direct control on all such institutions nor any account has been given as to why and for what reason, the Wakf Board should not be a party to these proceedings. The Committee or such other person, who represents the Mosque, as per the provisions of the Wakf Act is also not before the Court to represent the Institution. It is nobody's case that the petitioners are duly constituted representatives of the Mosque, either by the Wakf Board or in other capacities like Mutawally etc., Therefore, given a go bye to any technicalities, it cannot be said, the Institution is before the Court, so as to proceed against it for those alleged acts. No

explanation is forthcoming on behalf of respondent for not adding either of the parties, the Mosque and the Wakf Board. It is needless to mention that unless the Institution is duly and properly proceeded against, there does not exist a valid and enforceable application. Nor, the interests of the Institution remain well protected or taken care of. Otherwise, it may lead to a situation, where any parties, who do not represent the Institutions legally, to go back or collude with any applicant. It also would lead to a situation even after obtaining any such orders seeking eviction or otherwise, the Institution can get over any implementation thereof on the ground that they are not parties. Following the aforementioned decision, we hold that the present application was similarly filed against the Committee and its members without impleading the Mosque, which is, *prima facie*, not maintainable and could not have been entertained in respect of any allegations, which are directed for and on behalf of the Mosque.

The Writ Petition is accordingly allowed. The impugned order dated 25.11.1998 in L.G.C.No.8 of 1993 is set aside. It shall, however, open for the respondents herein to file a proper application afresh impleading the Mosque and such other persons as they deem fit and the same would be disposed of on merits and

in accordance with law unaffected or uninfluenced by any of these findings or proceedings. No costs.

(B.PRAKASH RAO, J)

(M.VENKATESWARA REDDY, J)

22nd January 2007

Note: CC by two weeks
and LR copy be marked.

B/O

RRB/Chvn

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[\[1\]](#) AIR 1979 SC 1682